

REMARKS

At the time of the Sixth Office Action dated December 11, 2009, claims 1-11 and 13-23 were pending and rejected in this application. Claims 24-41 have been added, and Applicants submit that the present Amendment does not generate any new matter issue.

Applicants have cancelled claims 1-11 and 13-23 to remove these claims from further consideration in this application. Applicants are not conceding in this application that those claims are not patentable over the prior art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the present application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

CLAIMS 1-11 AND 13-23 ARE REJECTED UNDER THE SECOND PARAGRAPH OF 35 U.S.C. § 112

Claims 1-11 and 13-23 have been cancelled. Thus, the Examiner's rejection of these claims under the second paragraph of 35 U.S.C. § 112 is moot.

**CLAIMS 1-11 AND 13-23 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS
BASED UPON TROSSMAN ET AL., U.S. PATENT PUBLICATION NO. 2003/0149685 (HEREINAFTER
TROSSMAN), IN VIEW OF DELP ET AL., U.S. PATENT NO. 5,996,013 (HEREINAFTER DELP) AND
MCCARTHY ET AL., U.S. PATENT NO. 7,140,020 (HEREINAFTER MCCARTHY)**

Claims 1-11 and 13-23 have been cancelled. Thus, the Examiner's rejection of these claims under 35 U.S.C. § 103 is moot.

Applicants note that independent claims 24, 30, and 36 each recite limitations similar to the following

comparing the calculated benefit for the particular one of the plurality of lagging processes with other calculated benefits for others of the plurality of lagging processes being assigned the particular one of the plurality of available resources; and

assigning, within the computer hardware system and based upon the comparing, the particular one of the plurality of available resources to a selected one of the lagging processes.

With regard to dependent claim 2 (now cancelled), which previously recited "allocating the set of available resources to at least one of lagging processes based on the anticipated benefit," the Examiner asserted the following in the last full paragraph on page 9 of the Fifth Office Action:

As per claim 2, McCarthy teaches further comprising allocating the set of available resources to at least one of the set of lagging processes (Column 3, lines 60-67). Trossman teaches allocation of resources based on the anticipated benefit (Para 80).

For ease of reference, the Examiner's cited passages are reproduced below:

The WLM also receives performance information from performance monitors, which are processes that monitor the performance of the applications and devices within the partition. The WLM examines the information from the performance monitors and compares the information with the goals. Based on the comparison, the WLM may increase, decrease, or leave unchanged, an application's entitlement. If the performance of an application is lagging, e.g., if transactions are taking longer than the goal, then the WLM increases the entitlement. (column 3, lines 58-67 of McCarthy)

A degradation prediction mechanism 402 in the objective difference mechanism 32 predicts how the performance of an application environment will degrade if the resource requirements determined by the resource requirements determination mechanism 400 are not implemented. The degradation prediction mechanism 402 compares the predicted degradation of performance with operating objectives for the application environment to determine the

discrepancies between the degraded service and the operating objective. (paragraph [0080] of Trossman)

Upon reviewing these passages, although McCarthy teaches allocating resources, this allocation is based upon whether or not the performance is lagging (i.e., if transactions are taking longer than the goal). Notably, McCarthy does not teach allocating based upon a comparison of calculated benefits for multiple lagging processes.

Trossman does not teach the allocation of resources based on the anticipated benefits, as alleged by the Examiner. Instead, Trossman teaches identifying how performance will be degraded if resource requirements are not implemented. Also, this cited passage is completely silent as to the allocation of resources.

Applicants' position is that the above-identified teachings from McCarthy and Trossman, even if combined, would not result in the claimed invention. Thus, Applicants respectfully submit that a rejection of claims 24-41 under 35 U.S.C. § 103 based upon the combination of Trossman, Delp, and McCarthy would not be proper.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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